the "approval" was subsequent to the carrying out of the work.

I am unable to accept this contention. In *Yap Choo Lian's* case, Murray-Aynsley C.J. clearly considered that the occupier had to obtain the prior approval of the local authority before executing any work and I agree with his view.

I would accordingly allow the appeal and set aside the order giving judgment for the respondent on the counterclaim and the order as to costs on the counterclaim and substitute therefor an order dismissing the counterclaim with costs. The appellant will have the costs of this appeal.

Appeal allowed.

Solicitors: *Braddell Bros.; N. A. Christopher.*

ABDUL RAHMAN TALIB v. SEENIVASAGAM & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) March 21, 1966]

[K.L. — Federal Court Civil Appeal No. 112 of 1964]

Libel and Slander — Libel — Defence of justification — Views of judge on credibility of witnesses — Defamation Ordinance, 1958, s. 8.

This was an appeal against the decision of Hepworth J. who had held that the defendants had made out their defence of justification ([1965] 1 M.L.J. 142).

The plaintiff/appellant had claimed damages for slander in respect of a verbal statement made by the 1st defendant, and for libel in respect of written statements made by the 1st and 2nd defendants, alleging corrupt practices by the plaintiff. The alleged slander was contained in a statement made by the 1st defendant at a meeting at the Chinese Assembly Hall, Kuala Lumpur, referring to and repeating what he had already said as a member of Parliament in the House of Representatives, and the alleged libels were contained in (a) a written statement handed over by the 2nd defendant to persons present at that meeting and (b) a written statement handed over by the 1st defendant to a press representative at that meeting. The 1st defendant in his defence pleaded qualified privilege, fair comment and justification. The second defendant pleaded justification. The trial judge held that the defence of qualified privilege failed but that the defendant's defence of justification succeeded.

Held: (1) the learned trial judge had drawn the proper inferences from proved facts, in holding as he did that the plaintiff had received favours but not money and in coming to the conclusion that although the defendants had failed to prove the truth of the charge relating to money, the imputation in that respect did not materially injure the plaintiff's reputation having regard to the truth of the rest of the charges;

(2) taking the evidence in the case as a whole and on the balance of probabilities, the defence of justification must succeed.

Per Thomson L.P.: In the circumstances of this case very considerable weight must be given to the views of the trial judge on the relative credibility of the witnesses.

Cases referred to:—

(1) *Belt* v. *Lawes* (1882), 51 L.J. Q.B. 359.

(2) *Archbolds Ltd.* v. *S. Spanglett Ltd.* [1961] 1 All E.R. 417, 421.

(3) *Adam* v. *Ward* [1917] A.C. 309, 334.

FEDERAL COURT.

R. H. V. Rintoul, Eusoffe Abdoolcader and *G. S. Hill* for the appellant.

Chan Nyarn Hoi for the first respondent.

Dato' S. P. Seenivasagam for the second respondent.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): The plaintiff in this case was the Minister for Health in the Government of the Federation of Malaya. The first defendant is an advocate and solicitor and a Member of the House of Representatives. The second defendant is a company director. The plaintiff's claim was for damages for libel and slander alleged to have been published by the defendants at the Chinese Assembly Hall in Kuala Lumpur on 11th September 1963.

Hepworth J. dismissed the claim and the plaintiff now appeals to this court against his decision. The first defendant has also filed a cross-appeal but, according to him, his purpose was merely to support the judge's grounds of judgment.

I shall endeavour to set out the facts of the case as concisely as possible. In 1958, the second defendant had applied to the Pahang Government for a licence to extract bat guano at a place called Kota Gelanggi, Pulau Tawar, in the District of Jerantut in the State of Pahang. The guano was to be sold as fertiliser. In 1959 armed with a letter of introduction, he went to see the Mentri Besar of Pahang in connection with his application. In April 1960 a licence was granted to him, expiring on 31st December 1960.

From time to time, this licence was renewed; first, to 30th June 1961, then to 31st December 1961, and finally to 30th June 1962, all in the name of the second defendant. He stated that sales in any large quantity were not possible as the renewals of the licence were only for short periods each time, rendering it impossible to guarantee a steady continuous supply to prospective purchasers.

About the end of 1961 the second defendant came to understand that the Pahang Government was proposing to change its policy in regard to such licences by issuing them only to limited companies rather than to individuals. Consequently he approached one Che Sabri bin Haji Dhalan with a view to his putting up the capital to form a company. Che Sabri agreed and contributed $4,300 on the understanding that he was to receive shares in the company for such amount in due course. On 11th December 1961 the Sharikat Berhad Baja Asli Melayu or Malay

Natural Fertiliser Co. Ltd., (hereinafter referred to as the "old company") was registered, the directors being the second defendant and Che Sabri. Without any delay the old company then applied for a 15 year lease of the area at Kota Gelanggi and a licence to extract guano for that period.

One evening in the latter part of 1961 or early 1962, the second defendant, Che Sabri and Che Musa bin Abdul Rahman, (father of the plaintiff's wife) went to call on the Mentri Besar of Pahang regarding the application for the 15 year lease and licence. They were told by the Mentri Besar that the matter would be considered by the State Council.

In March 1962 the second defendant's family, consisting of his wife, a son and a daughter, came to live in the plaintiff's house at Kia Peng Road, Kuala Lumpur. It would appear that the second defendant himself stayed there only off and on until June 1962, when the engagement took place between the plaintiff's youngest brother and the second defendant's daughter, after which date the second defendant appears to have also taken up more regular residence at the plaintiff's house. The reason for these moves would appear to be that the second defendant was then in financial difficulties.

While awaiting a reply from the Pahang Government to the application for the 15 years lease and licence, the second defendant contacted a Japanese gentleman by the name of Suzuki, who was sufficiently interested to take samples of guano back to Tokyo for analysis. The analyst's report was satisfactory, the guano having been found to contain phosphate, in some cases up to nearly 40%. The second defendant then in May 1962, went to see a Mr. R. Hughes in Kuala Lumpur, who introduced him to a Mr. H. G. Warren and a Mr. D. W. A. Corkett. These gentlemen became interested in the guano business. As a result of discussions between the second defendant and Messrs. Warren, Corkett and Hughes, an agreement was entered into on 30th May 1962 whereby the second defendant agreed to grant Messrs. Warren, Corkett and Hughes the sole and exclusive right to remove bat guano from Kota Gelanggi in consideration of an immediate payment of $3,000 and a further payment of $50,000 upon the issue of the 15 year lease. In addition they were to pay to the second defendant tribute at the rate of $8.40 for every ton of guano removed. Paragraph 5 of this agreement reads as follows:

"5. Within fourteen (14) days of the issue of the said lease, the licensee (2nd defendant) shall in consideration of a further sum of dollars fifty thousand only ($50,000), to be paid by the contractors (Messrs. Warren, Corkett and Hughes) to the licensee enter into a formal agreement to grant to the contractors and/or their nominees the sole and exclusive right to enter and remove bat guano from the said land for the duration of the period stated in the said lease and containing such terms and conditions as may be mutually agreed upon by the parties hereto and subject to the rate of tribute set out in clause 6 hereunder and such agreement shall be prepared by and executed before Messrs. Allen & Gledhill, Advocates and Solicitors, Oversea Chinese Bank Building, 23 Market Street (Top Floor), Kuala Lumpur, Provided Always that should the contractors and/or their nominees refuse to enter into the aforesaid agreement within the aforesaid period of 14 days then in the happening of such an event the contractors their nominees servants and agents shall forthwith vacate the said land and the sum of dollars three thousand ($3,000) paid under clause 1 above shall be forfeited to the licensee and this agreement shall be null and void and of no effect and neither party shall have any claim against the other."

The second defendant then had only a licence which was due to expire on 30th June 1962, so that it was important for the old company to obtain their long lease and licence as soon as possible, both to enable Messrs. Warren, Corkett and Hughes to extract guano after 30th June 1962 and to enable the second defendant to obtain payment of the promised $50,000. The initial sum of $3,000 was in fact paid by Mr. Warren to the second defendant on 25th May 1962. The agreement had been drawn up by Messrs. Allen & Gledhill, a firm of advocates and solicitors in Kuala Lumpur who were the firm of solicitors that had prepared the memorandum and articles of association and dealt with the registration of the old company and were the solicitors expressly referred to in clause 5 of the agreement as reproduced above.

The second defendant stated that, at the beginning of June 1962, he was unofficially informed that the old company's application for the lease would be granted, but only for three years.

In June 1962, the second defendant's daughter became engaged to the plaintiff's youngest brother and the engagement ceremony took place that month.

On 27th June 1962, Mr. Warren gave the second defendant a cheque for $5,000 for his own use.

On 24th July 1962, Messrs. Warren, Corkett and Hughes registered a company known as the Malayan Phosphate Co. Ltd.

Some time in June or July 1962, the second defendant and Che Sabri decided to seek the plaintiff's aid in expediting the issue of the lease. They saw him and he agreed to help but advised them to be patient. On 10th August 1962, according to the second defendant, he again went to see the plaintiff who thereupon telephoned the Mentri Besar, Pahang, reporting a complaint of delay in the issue of the lease and licence. The Mentri Besar's reply was that he would find out and tell him what the position was.

On the same day, 10th August 1962, the old company passed a resolution to open an account

with the Bank of America in Kuala Lumpur. In the resolution it was stated that cheques drawn on such account should be signed by two persons, the second defendant and Che Rahmah binte Musa. This lady is the plaintiff's wife. The resolution was duly forwarded to the Manager of the Bank of America together with a copy of the memorandum and articles; the accompanying letter dated 14th August 1962 asked for the necessary forms and specimen signature cards for opening the account. From the initials appearing at the foot of the forwarding letter, which was put in evidence, the letter appears to have been dictated or written by Mr. Warren.

On 17th August 1962, Mr. Warren gave the second defendant a cheque for $10,000 for his own use.

On 21st August 1962, the Mentri Besar wrote to the plaintiff, referring to their telephone conversation of 10th August 1962 and informing him that on 26th June 1962 the State Government had agreed in principle to grant a licence for extracting guano at Kota Gelanggi to the old company: the licence was for a period of 3 years only.

On 12th September 1962 a cash cheque No. 82876 for $500 was drawn on the account in the Bank of America by the second defendant and Che Rahmah. This cheque was endorsed by one Abdul Hamid bin Abu Bakar, to whom I shall refer later in more detail.

On 25th September 1962 another cash cheque No. 82883 for $500 was drawn on the same account by the second defendant and Che Rahmah. This cheque was also endorsed by the same Abdul Hamid bin Abu Bakar.

On 30th September 1962, the wedding was solemnised between the second defendant's daughter and the plaintiff's youngest brother.

On 7th October 1962, cash cheque No. 82890 for $527 was drawn by the second defendant and Che Rahmah. It was admittedly used to pay some of the expenses of the recent marriage.

On 8th October 1962 the second defendant paid the required fee and obtained the licence to extract guano.

On 15th October 1962 certain events allegedly occurred, as to which there was acute controversy. The second defendant alleged that there was a meeting between himself and the plaintiff at the latter's house when demands were made which he was compelled to reject. The plaintiff denied that anything of the sort ever took place.

On 16th October 1962, cash cheque No. 82893 for $664 was drawn by the second defendant and Che Rahmah. It was also used to pay some of the marriage expenses.

At some date after 8th October 1962 the second defendant accompanied Che Sabri on a long journey to Kota Bahru for the purpose of consulting a lawyer, Che Ishak bin Abdul Hamid, about a fresh agreement to replace the agreement of 30th May 1962. They called on the solicitor at his house, not his office. He promptly prepared a draft which he handed to the second defendant.

Some time between 15th October 1962 and 6th November 1962 a meeting took place at the house of one Che Osman in Kuala Lumpur, where the second defendant and Che Sabri called on Che Ishak. There was again acute controversy as to what took place on this occasion.

On 26th November 1962 Che Rahmah wrote to the Bank of America that she would no longer be a signatory to cheques drawn on that bank. Her letter reads as follows:

24 Kia Peng Road,
Kuala Lumpur.
26th November, 1962

The Manager,
Bank of America Ltd.,
Kuala Lumpur.

Dear Sir,

MALAY NATURAL FERTILISERS COMPANY LTD.

I was appointed by the board of directors of the abovementioned company to operate its account with your bank. This is to inform you that from this date, I have withdrawn myself from being the nominee of the company and until further notice to you by the abovementioned company, the account will be operated solely by Abu Bakar bin Ismail.

2. It is hoped that your bank will note that I am in no way associated with the Malay Natural Fertilisers Company Limited.

Yours faithfully,
Sgd. R. R.
(R. Rahmah)."

On the 3rd December 1962, the second defendant and the old company, through their solicitors, wrote to Messrs. Warren, Corkett and Hughes of the Malayan Phosphate Co. Ltd. giving them notice to execute the new agreement pursuant to clause 5 of the agreement of 30th May 1962.

On 4th December 1962, Che Sabri wrote to the Registrar of Companies that he had resigned as a director of the old company. On 12th December 1962, one Che Hassan bin Awang was appointed a director in place of Che Sabri.

On 12th December 1962, Sharikat Perusahaan Malaysia Ltd. (hereinafter referred to as the "new company") was registered, the first directors of which were Che Musa (father of Che Rahmah), Dato' Mahmud bin Mat (uncle of the Mentri Besar and father-in-law of the Commissioner of Lands) and one Che Abdul Rani bin Bidin. Che Ishak was the solicitor engaged in the formation of this new company.

Some time after 26th November 1962, Che

Rahmah informed the Mentri Besar, when he visited the plaintiff's house, that the second defendant had been demanding from Mr. Warren moneys to be given to the Mentri Besar and the Pahang U.M.N.O. because at that time U.M.N.O. was contemplating putting up a building in Kuantan. According to the Mentri Besar, he did not wish to get the second defendant into trouble by reporting him to the police; so he decided to call for the second defendant and give him some advice.

On 28th December 1962, the old company through their solicitors gave written notice to the Malayan Phosphate Co. Ltd. stating *inter alia* that unless the Malayan Phosphate Co. Ltd. confirmed on or before 31st December 1962 (a) acceptance of the terms and conditions of the new agreement and (b) their willingness to execute the new agreement within the first week of January 1963, the old company would call upon the Malayan Phosphate Co. Ltd. to vacate the said land on or before the 31st December 1962 and would hold the company their servants and agents trespassers in the event of their remaining on the said land after that date. The Malayan Phosphate Co. Ltd. by letters dated 31st December 1962 and 5th January 1963 refused to enter into the new agreement. Thereupon the old company through their solicitors on 10th January 1963 gave final notice to the Malayan Phosphate Co. Ltd., to vacate the said land forthwith.

According to the acting District Officer of Jerantut, Haji Osman bin Haji Mohamed Baki, he had carried out an inspection of Kota Gelanggi and discovered that guano had been removed without his knowledge. He thereupon wrote to the old company about it but the allegations were denied. He then instructed the assistant district officer to make further investigations and the latter duly submitted a written report dated 12th January 1963 to the effect that, between 7th September 1962 and 25th November 1962, 21 tons of guano had been removed. This report was then submitted to the Commissioner of Lands and Mines, Pahang. I should observe here that all the allegations against the old company were based on hearsay which was never proved and the company had been given no opportunity whatsoever to answer the charges before their licence was cancelled. The action so taken clearly violated all principles of natural justice.

On 3rd January 1963, the Mentri Besar wrote inviting the second defendant to meet him at his office at 10.30 a.m. on 23rd January 1963. Copies of this letter were sent to both the plaintiff and Che Musa, the latter being also invited to the meeting.

This meeting at the Mentri Besar's office duly took place on 23rd January 1963. Those present were the Mentri Besar, the second defendant, Che Musa and one Che Ismail, who came from the office of the Commissioner of Lands and Mines at the express invitation of the Mentri Besar. The Mentri Besar said he asked the second defendant whether he had demanded money from Messrs. Warren and Corkett. Yet, strangely enough, the Mentri Besar did not state what the second defendant's reply was, if any, to this question, which, after all, was the ostensible object and purpose of his attendance. However, the Mentri Besar did say that the second defendant objected to the presence of both Che Musa and Che Ismail. The second defendant's reason for this, the Mentri Besar said, was that he wished to make a complaint about Che Rahmah, who is Che Musa's daughter. The Mentri Besar refused the second defendant's request that Che Musa should leave the room, and so the second defendant left the meeting. The Mentri Besar explained he had also intended to question the second defendant about the unsatisfactory running of the business by the old company but, as it turned out, the question was never raised.

On 28th January 1963 the new company of Che Musa, Dato' Mahmud and Che Abdul Rani applied to the Pahang Government for a licence to extract guano from three areas at Kota Gelanggi, one of which was the very area over which the old company was still holding a valid licence. In this connection the second defendant stated that he wrote two or three times to the District Officer, Jerantut, asking him to accept temporary occupation licence fees for the year 1963, but to no avail. He then sent a cheque for the fees but it was returned.

On 16th February 1963, the Mentri Besar sent a second letter to the second defendant, referring to his previous letter and to the meeting on the 23rd January 1963, but now flatly in terms contradicting his previous letter and stating that the extraction of guano was not being carried out to the satisfaction of the State Government. Copies of this leter were sent to the plaintiff and Che Musa as well for their information.

On 7th April 1963 the second defendant, as a director of the old company, wrote a letter to the Prime Minister making allegations against the plaintiff, to the effect that the latter was taking action to cause the old company's licence to be withdrawn in order that it should be given to the new company.

On 5th May 1963 an issue of the *Utusan Zaman* contained some items of news based on information obtained from the second defendant, stating that the Pahang Government had not permitted the old company to renew its temporary occupation licence in respect of Kota

Gelanggi, Jerantut, and alleging that the land had been given to another company.

On 27th May 1963 the District Officer, Jerantut, informed the second defendant that the old company's licence had been withdrawn.

The *Utusan Zaman* of 1st August 1963 published the Pahang Government's reply to the allegations made in the issue of 5th May 1963. It was in the form of a letter from the State Information Officer, Pahang, omitting any reference to the temporary occupation licence but only to the licence to extract guano. It stated that this licence had been cancelled because the old company had allowed another company to extract the guano, that the numbers of lorries transporting the guano had not been notified to the Collector of Land Revenue and that the royalty had not been paid in respect of guano already extracted.

On 7th August 1963 a licence to extract guano at Kota Gelanggi was issued to the new company.

On 18th August 1963 one Che Zulkiflee, now deceased, an opposition member of the House of Representaties, spoke to the first defendant, also an opposition member, but of a different political party, and handed over to him a file which had been given to Enche Zulkiflee by the second defendant and which included, amongst other documents, the second defendant's statement attached to the statement of claim as Appendix "A". The first defendant took this file away and, having studied it, on 22nd August 1963 moved the adjournment of the House in the following terms:—

"Mr. Speaker, Sir, I rise under Standing Orders 18(1) to ask leave to move the adjournment of this House for the purpose of discussing a definite matter of urgent public importance. Mr. Speaker, Sir, at this stage I am not entitled to go into the details of why I want to move it, but it is necessary only for me to say that I seek your permission to move the adjournment of this House to discuss the matter of corrupt practice indulged in by the present Minister of Health (meaning the plaintiff) in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd., Pahang, and that these allegations against the said Minister will be shown by documentary and other proofs in my possession. I submit, Sir, that this matter is definite, this matter is urgent, because in the public interest such matter must be considered by this House without any delay and appropriate action to suspend the Honourable Minister at least will be taken. I do hope that I will get that leave and I do hope that there will be no objection raised by members."

Later the same day in the House of Representatives, the plaintiff addressed the Speaker as follows:

"I am quite aware of that, Sir, and I am not going to make a statement now. But I think I have got to challenge the Member for Ipoh (the first defendant) to repeat that allegation outside this House or bring the matter to court."

On the following day, 23rd August 1963, a note signed by the first defendant was circulated among newspaper correspondents present in the House of Representatives. The note reads:

"*Press statement* — Please pass this round.

With reference to the challenge issued yesterday by the Minister for Health, I accept the challenge as already indicated by me in my speech in Parliament to-day. The time and date to be notified to me by the challenger who should be present himself. I could not refer specifically because of Standing Orders.

D. R. Seenivasagam
23.8.63 "

On 5th September 1963, the plaintiff wrote to the first defendant as follows:—

"Dear Sir,

House of Representatives'
Proceedings on 22.8.1963

On the 22nd of August, 1963, you are recorded as having stated in the House of Representatives:—

"I seek your permission to move the adjournment of this House to discuss the matter of corrupt practices indulged in by the present Minister of Health in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd., Pahang, and that these allegations against the said Minister will be shown by documentary and other proofs in my possession. I submit, Sir, that this matter is definite, this matter is urgent, because in the public interest such matter must be considered by this House without any delay and appropriate action to suspend the Honourable Minister at least will be taken."

I place on record that the statement that I had indulged in corrupt practices in that I have received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd. is untrue and is highly defamatory.

However I am also advised that in view of the fact that you made this statement in the House the statement is absolutely privileged and I cannot therefore vindicate my character before the public by commencing proceedings in the courts.

The local press has reported that you have stated that if challenged by me you are prepared to repeat this statement in circumstances which would result in my having an opportunity to test the accuracy thereof in the courts.

I accordingly now accept your invitation and challenge you either:—

(i) To admit publicly that you have made a mistake and withdraw the allegations *or*

(ii) If you refuse to do this to repeat the statement set out above outside the House in the presence of witnesses who may record accurately what you say.

Should you accept this challenge, then I would suggest that the most convenient place might be the Chinese Assembly Hall in Kuala Lumpur and that a suitable date and time would be on 11th instant at 3 p.m.

Please advise me by return if this date and place suit you, so that I may arrange to be present and make the necessary arrangements.

Yours faithfully,
Sd. Abdul Rahman bin Haji Talib."

On 6th September, 1963, the first defendant replied as follows:—

"Dear Sir,

House of Representatives' Proceedings
22.8.63

Thank you for your letter of the 5th September, 1963, which came to hand late last evening. Before your letter reached me I was contacted by the press saying that you had released copies of the letter to them for publication. This is most astonishing.

I make no comment on paragraphs 1, 2 and 3 of your letter for the moment for the good reason that I would like to check the record of proceedings of the House to satisfy myself.

Your paragraph 4 which starts with the words 'The local press . . . . and ends with the words in the courts' followed by the subsequent paragraph suggests that I invited you to challenge me on the above subject. As you are aware this suggestion is quite fantastic and is a misstatement of the facts. You of your own volition and completely disregarding the Parliamentary privilege which I have as an M.P. to speak in the House, challenge me to repeat what I had said in the House outside the House. You therefore chose to ignore the remedies you have within the House to deal with any unfounded allegations that may be made by any Member of the House.

That unprovoked challenge which you issued to me on your own I am ready to accept and will be at the Chinese Assembly Hall at 3.00 p.m. on the 11th instant. If you still maintain your challenge made on your own bat I hope you will be there too.

Hoping to see you.

Yours faithfully,
Sd. D. R. Seenivasagam."

The plaintiff then made arrangements for the use of the Chinese Assembly Hall, Kuala Lumpur, including the provision of microphones and loudspeakers, and obtained a police permit for holding the meeting.

Thus, on 11th September 1963, the meeting took place attended by large numbers of the public and press representatives. In the presence of this congregation the first defendant addressed the plaintiff and the audience through the microphone and loudspeakers as follows:—

"You allege that I besmirched your character in the House. You are wrong, because you could have asked the House to punish me under Standing Orders with a maximum penalty of $1,000 or two weeks in jail. You are no Parliamentarian and no politician. I am certainly not going to apologise to you because there is nothing to apologise for and nothing to withdraw. You issued this challenge to appear here on your own volition without any instigation from me. I am here today at the invitation of Inche Rahman Talib. I have been asked by him to repeat here what I said in Parliament on 22nd day of August, 1963. What I said was based on information and evidence oral and documentary which was supplied to me and which I have no reason to doubt. The proper course in all democratic countries would, in such circumstances, have been to adopt parliamentary procedure and appoint a commission of inquiry to inquire into allegations of misconduct. This would have been the quickest way of clearing his name — if it could be cleared at all. In this connection you will recall that Prime Minister Lee Kuan Yew of Singapore has always ordered inquiries when allegations are made in Parliament. I am not concerned whether Inche Rahman Talib is criminally liable or not. It seems to me, however, that if a commission of inquiry is set up then there would be sufficient evidence to discredit him and to render him unfit to continue in office as a Member of Government.

I have read in the press about a duel of words, and so on. So far as I am concerned the duel of words will take place not here but in some court or commission of inquiry. I am here at the invitation of Inche Rahman Talib made at his own instance and of his own free will and the invitation is to repeat the allegations which I said in Parliament should be inquired into. I now repeat the allegations as recorded in the official records of Parliament:

> 'Mr. Speaker, Sir, I rise under Standing Orders 18(1) to ask leave to move the adjournment of this House for the purpose of discussing a definite matter of urgent public importance. Mr. Speaker, Sir, at this stage I am not entitled to go into the details of why I want to move it, but it is necessary only for me to say that I seek your permission to move the adjournment of this House to discuss the matter of corrupt practices indulged in by the present Minister of Health (meaning the plaintiff) in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd. Pahang, and that these allegations against the said Minister will be shown by documentary and other proofs in my possession. I submit, Sir, that this matter is definite, this matter is urgent, because in the public interest such matter must be considered by this House without any delay and appropriate action to suspend the Honourable Minister at least will be taken. I do hope that I will get that leave and I do hope that there will be no objection raised by Members.'

One of those who have furnished me with information and evidence is present here today. He has expressed a desire to furnish copies of his information to those interested. If he does so he will do it of his own volition.

I challenge Inche Rahman Talib to submit to an inquiry by a commission of inquiry or by any tribunal constituted under parliamentary practice and procedure and I honestly believe that such an inquiry will show:

(a) That the Minister, Inche Rahman Talib is guilty of misconduct to the extent that such misconduct renders him, in my opinion, unfit to be a Minister of the Government.

(b) That he has been guilty of nepotism.

(c) That by reason of such misconduct he is unfit to hold public office as he has, in my opinion, shaken public confidence in the fair and impartial administration of public affairs."

At the same time the second defendant handed out to members of the congregation a statement in romanised Malay which is Appendix "A" to the statement of claim.

At the conclusion of the meeting the first defendant handed to Mr. Tilak (who was known to the first defendant as the press representative of the *Straits Echo* newspaper) the written statement, which is Appendix "B" to the statement of claim, containing substantially what he had just said, except the quotation from the official report of the House of Representatives.

On 12th September 1963 the words spoken by the first defendant were substantially reproduced in the *Straits Times* and the *Malayan Times* newspapers. Similar reports were also published in other newspapers circulating in the Federation of Malaya.

So much for the facts leading to the action in this case.

In their defence, the first defendant pleaded qualified privilege, fair comment and justification while the second defendant pleaded justification. The learned trial judge held that there was no substance in the plea of qualified privilege and fair comment but found for the defendants on the issue of justification and on that ground dismissed the plaintiff's claim. In this appeal, therefore, the fundamental issue is that of justification.

By section 3 of the Civil Law Ordinance 1956, the common law of England is applicable in Malaysia except in so far as it has been modified by the provisions of the Defamation Ordinance, 1957. Sections 5, 8 and 9 of the Defamation Ordinance, 1957, are similar to sections 2, 5 and 6 of the English Defamation Act, 1952. So for the present purposes, no distinction arises.

Since we are only concerned here with the defence of justification, the plaintiff would have established a *prima facie* cause of action once he had proved publication of the defamatory words. Where the plaintiff proves publication of defamatory words it is for the defendant if he wishes to set up the defence of justification to plead and prove the facts on which he relies to show justification. It is for the defence to show that the defamatory imputation is true. See *Belt* v. *Lawes*.[1]

At common law, under the plea of justification, the defendant must prove the truth of all material statements in the libel. There must be a substantial justification of the whole libel. If any material part were not proved true the plaintiff would be entitled to damages in respect of such part, provided, of course, that it would by itself form a substantial ground for an action for libel. By section 8 of the Defamation Ordinance, 1957, however, it is now provided that in an action for libel or slander in respect of words containing two or more distinct charges, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges.

The learned trial judge, having scrutinized the evidence carefully, in a well-considered judgment came to the conclusion that the evidence of the plaintiff's leading witnesses, namely, the plaintiff himself, Che Rahmah (D.W.5), Che Ishak (P.W.6), Che Sabri (P.W.10) and Che Musa (D.W.3) were not witnesses of truth. He thought the same also of the second defendant. He then proceeded to decide on the balance of probabilities and in my view this was the right and proper course to take in the circumstances of this case.

The judge had seen these witnesses and his views on their reliability and veracity should be accepted unless good grounds are shown to the contrary, which has not been done. His conclusions were based on the following salient points:

(1) What happened at the interviews between the second defendant and the plaintiff in July and on 10th August 1962?

(2) Was there a meeting between the second defendant and the plaintiff on 15th October 1962, and if so, what happened?

(3) Why did the second defendant and Che Sabri go all the way to Kota Bharu to see Che Ishak at his house and what happened at the interview with Che Ishak in Che Osman's house in October/November 1962?

(4) What was the reason for the breakdown in the relations between the plaintiff and the second defendant, which had been so cordial at least up to the middle of October 1962?

(5) Whether the proceeds of cash cheque No. 82876 dated 12th September 1962, for $500 and cash cheque No. 82883 dated 25th September 1962, for $500 were given to and accepted by Che Rahmah for her own use?

(6) Whether $1,000 in cash was given to Che Rahmah by the second defendant in July 1962, for her own use?

(7) Whether $3,000 in cash was given to the plaintiff by the second defendant in August and September, 1962 for his own use?

On the first point the second defendant and Che Sabri both stated that they saw Che Rahmah in July 1962, before seeing the plaintiff and that it was she who arranged for them to see the plaintiff. Che Rahmah denied this. There was, however, a meeting between the plaintiff, the second defendant and Che Sabri at which they asked the plaintiff to assist them in expediting the issue of the lease and licence and the plaintiff advised them to be patient. The second defendant's version was that the plaintiff asked what they were prepared to give him for his assistance in getting the licence issued quickly and the second defendant replied that he could give 25% share of the old company's interest, then worth about $50,000, and that, on hearing this, the plaintiff agreed to help. The plaintiff and Che Sabri, on the other hand, denied that any such conversation took place. According to Che Sabri he attended only one meeting with the plaintiff, but the second defendant stated that he went up again to the plaintiff on 10th August 1962 in order to find out if anything had happened, since the lease and licence had still not been forthcoming and the plaintiff then and there telephoned the Mentri Besar of Pahang inquiring into the reason for the delay. That this was true is borne out by the reply from the Mentri Besar which was in evidence on the record. The second defendant further stated that at this meeting the question of the plaintiff's share was again raised, followed by the plaintiff's request that his wife Che Rahmah should be a signatory of the company's

cheques so that there could be some check on its financial activities. This was denied by the plaintiff. Nevertheless, it was an established fact that a resolution dated 10th August 1962 was forwarded to the Bank of America on 14th August 1962, with a request for opening an account which should be operated by the second defendant and Che Rahmah as co-signatories. Che Rahmah's explanation was that she yielded to persuasion by the second defendant and Che Sabri. Her story was that the second defendant's personal account with the same bank having been closed owing to lack of funds, the bank would not open any account for the company unless there was another signatory besides the second defendant. For that reason she had agreed to sign the cheques merely to assist the second defendant as a relative. This explanation, though corroborated by Che Sabri, was not accepted by the learned judge, who took the view that, if it were true that the second defendant had had trouble with the bank on a previous occasion of such gravity that they were reluctant to open an account in the name of the old company because the second defendant was a director, the simple course would have been to open an account with some other bank. Acording to Che Rahmah, all that she did was to sign a yellow card, which was probably a specimen signature form; she never went to the Bank of America; she knew no one in the Bank of America and as far as she was aware she was unknown to the bank; she agreed that the name Che Rahmah would mean nothing by itself to the Bank of America. It is clear, therefore, that Che Rahmah's additional signature on the cheques could have had no more consequence, as far as the bank was concerned, than the signature of the second defendant's own wife or daughter and, therefore, there was no need for persuading her to become a co-signatory after she at first had refused. At that time she did not even have a bank account of her own. It was the plaintiff's case that he had been completely unaware of all this and his wife confirmed that she did not inform the plaintiff. The fact remains, however, that it was no casual matter because she had agreed only with reluctance. For my own part I believe that, if her story were true, she could not have failed to confide in her husband then or soon after to obtain his approval or advice. In my view it is a very unusual and most extraordinary thing for any Malay wife to have any sort of business dealings with others, even if they are her relatives and especially with regard to the signing of cheques, without first informing her husband. *A fortiori* when she was intelligent enough to realise that she lacked any experience in operating bank accounts. I am therefore fully in agreement with the opinion and conclusions drawn by the learned trial judge.

With regard to the second point, according to second defendant, he received a telephone call from Che Rahmah on 15th October 1962, asking him to go to the plaintiff's house in Kia Peng Road, Kuala Lumpur, because the plaintiff wanted to see him. On arrival there he said that the plaintiff suggested as follows:

(i) that Che Musa should be made a director of the company and receive a payment of $200 per month;

(ii) that Che Rahmah should be employed as a temporary secretary with an allowance of $200 per month;

(iii) that the nephew of the plaintiff should be employed as a clerk at a salary of $160 per month;

(iv) that the office of the company should be installed in a room at the back of the plaintiff's house in Kia Peng Road;

(v) that the company car should be kept at Kia Peng Road when not in use on the business of the company.

The second defendant said he did not agree to any of these proposals. The plaintiff denied these allegations in toto. I think I should observe that the date of this alleged meeting was very shortly after the temporary occupation licence and the licence to extract guano had been received and all fees and deposits had been paid and everything was ready for the undertaking to go ahead. On this point also I agree with the conclusions and finding of the trial judge.

On the third issue, the second defendant said that, some time after the meeting just referred to, a meeting took place at the house of one Enche Osman in Kuala Lumpur, at which the second defendant, Che Sabri and the lawyer Che Ishak were present. In the natural course of events this meeting was one following an earlier meeting in Kota Bharu. At the meeting in Enche Osman's house, according to second defendant, Che Ishak, purporting to act on behalf of the plaintiff, suggested that out of the tribute of $8.40 per ton which Messrs. Warren, Corkett and Hughes had agreed to pay under the agreement of 30th May 1962, $3 should be given to the plaintiff. An argument ensued in which the second defendant stated that the most that could be paid to the plaintiff would be $1.05, and not $3, to which Che Ishak replied that the plaintiff would never agree. Che Ishak and Che Sabri denied that any such conversation took place. Che Ishak's explanation was that he came to Kuala Lumpur on another matter and was staying with Enche Osman and he called the second defendant and Che Sabri to Enche Osman's house merely to enquire whether the agreement he drafted in Kota Bharu for them was acceptable and what the position with regard to the matter was. He further stated that, on telling the second defendant that he would have to return to Kota Bharu he could not leave the draft agreement uncompleted, the second defendant replied that it did not matter

as they would go back to the company's solicitors. According to Che Ishak it was only then that he realised that the company already had its own solicitors, Messrs. Allen and Gledhill. He added that the second defendant did not tell him that Messrs. Allen and Gledhill had previously prepared an agreement in connection with another transaction. He said that as the company had its own solicitors he did not want to act any more. Che Sabri's version was that they went to see Che Ishak in Kota Bharu because they thought it would be easier to consult a Malay lawyer. This is strange since there were quite a few Malay lawyers available on the spot in Kuala Lumpur at that time. That the agreement of 30th May 1962 was drawn by Messrs. Allen and Gledhill, was readily apparent because clause 5 thereof provided that the further agreement which was to follow on the grant of the 15 year lease was also to be prepared by Messrs. Allen and Gledhill. It is therefore surprising they should go all the way to Kota Bharu to consult Che Ishak instead of going to Messrs. Allen and Gledhill in Kuala Lumpur. The second defendant was never asked about his visit to Kota Bharu either in examination-in-chief or in cross examination. Now, Che Ishak was the lawyer who had been entrusted by Che Musa with the formation of the new company, and it was suggested by the defendants that the true reason for the visit to Che Ishak in Kota Bharu was that he was Che Musa's lawyer and one of the plaintiff's advisers.

I agree with the trial judge that Che Ishak must have known that Messrs. Allen and Gledhill were the old company's solicitors, because he must have read clause 5 of the agreement of the 30th May 1962, as that clause refers to a further agreement which was to be entered into — which was the agreement he was drafting — and that clause 5 expressly stated that the new agreement should be drawn by Messrs. Allen and Gledhill. In addition, the agreement of the 30th May 1962 had Messrs. Allen and Gledhill's name in the usual position on its cover. How then could he truthfully say that he was unaware that Messrs. Allen and Gledhill were the solicitors for the old company? In his evidence the plaintiff denied that he had employed Che Ishak as his solicitor. Che Ishak also denied it. Later, however, he admitted that he arrived at Kuala Lumpur two or three days before the meeting at the Chinese Assembly Hall, at the request of Mr. Rintoul of Messrs. Shearn, Delamore & Co. who was then acting for the plaintiff and that he was retained to act with Mr. Rintoul on behalf of the plaintiff. I am therefore satisfied that both the plaintiff and Che Ishak knew perfectly well that they were not speaking the truth. I accordingly agree with the conclusions and finding of the trial judge on this point.

On the fourth point it was alleged by the second defendant that the break down of the relations between himself and the plaintiff was due to his refusing to accede to the plaintiff's demands. Although it is clear that the break-down occurred subsequent to 15th October 1962, it is not altogether clear how long after this date the break-down took place. The second defendant and his family appeared to have left the plaintiff's house about a fortnight after the wedding whch took place on 30th September 1962. Both the plaintiff and Che Rahmah said that after the second defendant and his family had left their house the second defendant still continued to call. The learned judge was of the opinion that the break-down did take place, in point of time, after the meeting of the 15th October 1962 but between that date and the break-down, there was the further meeting at Che Osman's house in Kuala Lumpur at which the second defendant alleged that Che Ishak put forward further proposals on behalf of the plaintiff. The probabilities are, therefore, that the break-down took place, as Che Rahmah said, in November. In any event, the plaintiff's and Che Rahmah's version of the break-down was that the second defendant had asked Che Rahmah to sign a blank cheque, which Che Rahmah refused to do. Che Rahmah said that it was only then that she informed her husband for the first time of her being the co-signatory of the cheques and of her being asked by the second defendant to sign a blank cheque, which made the plaintiff very angry because he did not like her to be involved in the affairs of the old company. The plaintiff himself said that he considered that Che Rahmah had been tricked into agreeing to become a co-signatory. Thereupon he drafted the letter dated 26th November 1962 which was signed by Che Rahmah and sent to the Bank of America. The plaintiff said he was displeased because he considered that the second defendant had tricked Che Rahmah into signing cheques. Even if Che Rahmah's version of how she came to be a co-signatory was true, as well as what she told the plaintiff, the learned judge nevertheless could not see how it could be said that the second defendant tricked Che Rahmah into becoming a co-signatory. The plaintiff might in such circumstances have been cross because Che Rahmah agreed to become a co-signatory without telling him, but she was not tricked into doing so. Hence the learned judge rejected Che Rahmah's version of how she came to be a co-signatory. It was observed by the learned judge that the second defendant was never cross-examined on the question of his having asked Che Rahmah to sign a blank cheque. Accordingly it was difficult to believe that such an omission could have taken place had it in fact been the root cause of the break-up in the relations between the parties, whereas the defendants

were alleging that the break-up occurred for a very different reason.

The second defendant had never had the slightest difficulty in getting Che Rahmah to sign cheques. She herself said she would sign any cheque presented to her by the second defendant for her signature provided it was filled in. What would be the second defendant's object in asking her to sign a blank cheque in such circumstances? I agree with the learned judge that there never was a blank cheque. Consequently I agree with his conclusions and findings as well on this point.

In this connection, it was stated by Che Sabri that he accompanied the second defendant to the Bank of America to open the account, but the bank refused to do so and he did not seem to know why. Again, he did not know for a fact whether the second defendant had an account with the bank at any time. He also did not know what was the bank's reply to the second defendant, because he said he was waiting outside and he only knew what took place from what the second defendant had told him. I consider it incredible that Che Sabri, a director of the company, should have gone as far as the bank to open an account in which he was personally interested and then remain outside while the second defendant went in alone.

It was alleged by the second defendant that the reason why Che Sabri resigned his directorship was that he was persuaded to do so by Che Musa after the second defendant had refused to accede to any of the plaintiff's demands. That reason might not be sound if Che Sabri had good grounds. Now, according to Che Sabri, there were three reasons why he resigned. The first was that he did not agree with the second defendant as to the manner in which he carried on the business. Secondly, it was said that on several occasions he had asked the second defendant to hold meetings of the company but the requests were never met and, thirdly, the second defendant had done something which he thought was extraordinary, in that the second defendant had sent him a telegram on 2nd March 1962 telling him that he, the second defendant, was dead. None of these reasons sounded plausible enough to the learned judge. It was not clear what precisely it was that he was objecting to about the conduct of the business because he did not say so. The running of the business had been, at least nominally, transferred to Messrs. Warren, Corkett & Hughes by the middle of May 1962. As to the second reason, when asked what meeting of the old company it was that he had requested the second defendant to hold and for what purpose he was unable to say. At any rate, the two of them must have met from time to time. With regard to the third reason, the second defendant explained that what he had intended Che Abdul Aziz, the sender, to say in the telegram was that the business was dead, the purpose being to get Che Sabri to come to Kuala Lumpur. The learned judge found it difficult to see how a telegram sent on 2nd March 1962 could possibly be a ground for Che Sabri resigning as a director more than eight months later, on 23rd November 1962, especially as Che Sabri himself had taken part in the events which occurred in July, August, September and October 1962 already referred to above.

Turning back again to the cheques, it is clear that Che Rahmah was quite prepared to sign the cheque (Ex. P. 18) for $527 and the cheque (Ex. P. 19) for $664 on the company account, knowing that they were for payment of the marriage expenses which had nothing to do with the affairs of the company, whose funds were used. Her explanation was that it was the second defendant's own responsibility to see that company funds were used for proper purposes in the course of company's business. The learned judge having seen and heard Che Rahmah formed the opinion that she was a highly intelligent woman who knew perfectly well that it was wholly improper to use company funds for the above purposes. He accordingly held that she was not a witness of truth and he rejected her explanation, not only as to why she became a co-signatory, but also about the blank cheque incident being the cause of her revealing that fact to her husband.

Now we come to Che Musa. He is father of the plaintiff's wife. The second defendant's father and Che Musa's wife are cousins. According to the second defendant he and Che Rahmah are second cousins. Che Musa stated that he accompanied the second defendant and Che Sabri to see the Mentri Besar in late 1961 or early 1962 merely in order to introduce the second defendant to the Mentri Besar (D.W.2). The Mentri Besar in his evidence, however, said there was no need for any introduction as he already knew the second defendant. Che Musa was present at the wedding on 30th September 1962. He also admitted that there had been occasions when he, the lawyer Che Ishak and Che Abdul Rani, one of the directors of the new company visited the plaintiff's house together. He had been asked in examination-in-chief whether he knew the old company had already a licence to extract guano from Kota Gelanggi. His reply was that perhaps the old company was formerly licensed to do business there. As he subsequently admitted that he knew very well that the old company had held such a licence, why was there any need to be so evasive at first? He said his intention with regard to his new company was to deal with many branches of business, but mainly to concentrate on the business of mining. He already knew about the

guano business at Kota Gelanggi not later than the beginning of 1962. He went on to state that, at the time of the hearing of this case, the new company was actually engaged in mining work, tin mining at Rompin, Pahang, and was also interested in mining elsewhere. Besides mining, they were also extracting guano from Kota Gelanggi. It would appear that, when the new company was formed, Dato' Mahmud, one of the directors, had a prospecting licence in respect of land at the 42nd milestone Kuantan-Jerantut Road and Che Abdul Rani, another director, had a prospecting licence in respect of 958 acres the whereabouts of which were not stated, while Che Musa himself had a concession at Rompin in respect of 1,900 acres. On being pressed in cross-examination Che Musa admitted that the mining rights at Rompin were still in his own name. He admitted ultimately that the new company was formed in order to develop the lands, but at the time of the hearing two and half years later, the new company had still made no application for prospecting or mining licences in respect of any area, had spent no money on mining in any way and was doing nothing then, and had never done anything in connection with any mining enterprise. Thus the only activity that the new company had ever engaged in was the extraction of guano at Kota Gelanggi. Che Musa did not deny that, at the meeting at the Mentri Besar's office on 23rd January 1963, he knew that the old company held a licence to extract guano at Kota Gelanggi and that between that date and 28th January 1963, he had had no information that the old company's licence had been or was going to be cancelled. Nevertheless, he did put in an application for a licence over the same area in the name of the new company. He stated that, at the meeting in the Mentri Besar's office on 23rd January 1963, he knew that the second defendant wished to make a complaint about his daughter, the plaintiff's wife, but he did not say what the complaint was about. In the opinion of the learned judge Che Musa was a devious and evasive witness and I see no grounds for differing from such conclusion.

It will be remembered that, as a result of the plaintiff's telephone call to the Mentri Besar on 10th August 1962, the Mentri Besar, replied to the plaintiff on 21st August 1962, reporting to him the result of his enquiries. The original of this letter was in the possession of the second defendant and produced by him. He said that the plaintiff had given it to him but this was denied by the plaintiff. The original of this letter (Ex. D. 10) has a note written in ink on it addressed to the plaintiff's personal assistant by the plaintiff's Assistant Minister, simply stating "For Hon. Minister." It was explained that in the ordinary course of events each letter should have been opened by the Assistant Minister and passed to the plaintiff's personal assistant. How then did the letter get into the hands of the second defendant? There were only two possible answers. Either the plaintiff had given it to him or the second defendant could have gone into the plaintiff's office in his house and extracted the letter from its cover. Since the second defendant would have had no means whatever of knowing that the letter had been received, it is only remotely possible that the latter explanation is the correct one; the much more probable explanation, which the judge accepted as true was the second defendant's statement that the plaintiff gave it to him. With respect I agree.

As regards the last three points at issue the only evidence of the payment of $1,000 in cash to Che Rahmah by the second defendant in July 1962 was that of the second defendant. The only evidence of the payment of $3,000 in cash to the plaintiff in August 1962 by the second defendant was that of the second defendant. There was no independent corroboration of such payments and the learned judge was not prepared to find that these payments were made.

With regard to cash cheque No. 82876 dated 12th September 1962 for $500 and cash cheque No. 82883 dated 25th September 1962 for $500 which the second defendant alleged he gave to Che Rahmah for her own use, both these cheques were endorsed by Che Abdul Hamid bin Abu Bakar. Che Hamid's evidence was that he endorsed these cheques, cashed them and handed the proceeds to the second defendant, who was then living in the plaintiff's house in Kia Peng Road and shared a room with him. Che Hamid was living in the plaintiff's house with his mother, who looked after the plaintiff's children. Che Hamid said that he was not a servant of the plaintiff and received no wages or salary. He did, however, receive free board and lodging and he worked for the plaintiff of his own free will for nothing. He held a driving licence and used to drive the plaintiff's car. He used to take the plaintiff's children to and from school. He used to go to the market to do the marketing, but he considered himself as not being employed by the plaintiff and said he was quite happy to be unemployed. He was aged 31 and had been living with the plaintiff since 1951. Thus he was clearly, if not employed by the plaintiff, dependent upon him. Although many cheques were signed by Che Rahmah during the period of the second defendant's stay at the plaintiff's house and although many of these cheques were cashed by different people, including the second defendant's wife, the only two cheques which were cashed by Che Hamid were these two cheques alleged by the second defendant to have been given to Che Rahmah for her own use. The learned judge, on the balance of probabilities and after seeing and hearing Che Hamid in the

witness box, found as a fact that when he cashed these cheques he handed the money to Che Rahmah for her own use. I agree with his views.

The learned judge also thought that probably what happened after the breakdown in relations was that, the plaintiff's demands having been refused, steps were taken to bring about the cancellation of the old company's licence to extract guano. Consequently it was probable that Che Rahmah told the Mentri Besar of the second defendant's money demands from Mr. Warren in order to prejudice the Mentri Besar against the second defendant. It was in evidence that both Mr. Warren and Mr. Corkett were present when the demand was made. Mr. Warren had been subpeonaed by the first defendant but was said to be in England and unavailable on the date of hearing. On the other hand, it was stated from the Bar that Mr. Corkett was in court during part of the hearing. Why was he not called by the plaintiff to substantiate Che Rahmah's statement? As Mr. Corkett was not called, it can be presumed that his evidence would be unfavourable to the plaintiff, and would not support the evidence of Che Rahmah in this connection.

But as a result of hearing Che Rahmah's story it could be expected that the Mentri Besar, Pahang, would be somewhat incensed over the suggestion that the Mentri Besar would be prepared to accept money. It was also probably then realised that the second defendant and the old company had delivered themselves into the hands of the enemy by reason of certain breaches of conditions of the licence for the extraction of guano, whether by the second defendant or the Malayan Phosphate Co. Ltd. it is not possible to say. Tuan Haji Osman stated that the breach committed was that the particulars of the registration numbers of vehicles used to remove the guano had not been given to the Collector of Land Revenue, Jerantut. The letter from the State Information Officer, Jerantut, in the *Utusan Zaman* of 1st August 1963 suggested that there were two further breaches of conditions, one being that another company, presumably the Malayan Phosphate Co. Ltd. had been permitted to remove the guano and the other being that the old company had failed to pay the royalty. There was no evidence what part, if any, the Malayan Phosphate Co. Ltd. had taken in extracting guano. As regards the payment of royalty one wonders what happened to the deposit of $6,300.

This led to the meeting in the Mentri Besar's office on 23rd January 1963 and his attitude there is much more understandable if he had been misled by Che Rahmah as to the money for himself and the Pahang U.M.N.O. and at the same time was aware that there had been breaches of conditions in the licence to extract guano. All these things appeared to the judge to support the second defendant's allegations as being substantially true. I share the same view.

The most important of the documentary and other evidence on which the first defendant relied was the second defendant's statement as set out in Appendix "A". It was conceded by all parties that, in order to justify, the first and second defendants had to discharge the onus of establishing substantially the truth of the words contained therein. In the opinion of the trial judge the defendants had succeeded in justifying by proving as substantially true the whole of the words contained in Appendix "A", with the exception of paragraph 18 relating to the payment of cash to the plaintiff.

There were two main charges against the plaintiff, one being the receipt of two sums of money and the other being receipt of favours. The learned judge had found that he did receive favours, but not money, and he came to the conclusion that, although the defendants had failed to prove the truth of the charge relating to money, the imputation in that respect did not materially injure the plaintiff's reputation, having regard to the truth of the rest of the charges. In my own view the judge had drawn proper inferences from proved facts, and taking the evidence in this case as a whole and on the balance of probabilities, I have come to the same conclusion that the defence of justification must succeed. Accordingly the appeal is dismissed with costs.

Thomson L.P.: I have had the benefit of reading in advance the judgment of Dato' Syed Sheh Barakbah and I agree with the results at which he has arrived and that the appeal should be dismissed.

Before us the judgment of the High Court has been attacked on a very great number of grounds. It is not unfair to say that each of these consists of an attack on an individual finding of the trial judge on the ground that it represents at least in part an inference not necessarily justified by the evidence from which it is drawn. For myself I must express my appreciation of the assistance I have derived from the formulation of these grounds of appeal and the competent and persuasive way in which they have been argued which have been of the greatest value in guiding my own examination of the case.

Nevertheless my views of these individual grounds are substantially the same as those expressed by my Lord.

It is unnecessary to repeat, probably in less felicitous terms, what he has said, particularly

as the course of reasoning which has led him to his results is very much the same as that followed by the trial judge. I would wish, however, to add a few words of my own.

Ultimately the whole case depends on the weight to be attached to the testimony of the various witnesses. Most important of all is the question of the relative credibility of the plaintiff and the second defendant, for of course the first defendant had no first-hand knowledge of the events which figured so prominently at the trial. The questions of credibility involved, however, are not simple questions of deciding which of the witnesses was telling the truth based on their demeanour and behaviour under cross-examination but require their evidence to be compared with a considerable body of documentary evidence and to be evaluated in the light of probability and of the *mores* and attitude of the society in which they have their being. In the circumstances very considerable weight must be given to the views of the trial judge. Again, as was said by Pearce L.J. in the case of *Archbolds, Ltd.* v. *S. Spanglett, Ltd.*[1]:—

"It is just such a case as this, cases that turn on *bona fides* and knowledge and half-knowledge, that the trial judge has so great an advantage over a court that relies on the colourless, impersonal and sometimes misleading transcript."

At this stage the case has to be dealt with on the basis that the defendants published matter relating to the plaintiff that was defamatory and that the only available defence was justification.

Indeed I think it is fair to say that the whole intention of the plaintiff and of the first defendant, as shown by the proceedings in Parliament and by the correspondence between them prior to the meeting in the Chinese Assembly Hall, was to provide the setting for an action of this sort that would be fought out on the issue of justification. Whether it is in the public interest that the courts should be available as an arena for a deliberately planned combat of this nature is ot course another matter which is no concern of ours.

At this stage I should, however, observe in parenthesis that in spite of this the first defendant has urged at the trial and in this court the defence that as a Member of Parliament he was entitled to some sort of qualified privilege. In my view this is without substance. Anything he said in Parliament was absolutely privileged and there might be, I do not say would be, merit in the argument that a qualified privilege attached to the repetition at the Chinese Assembly Hall of the words used in Parliament. But on that occasion the first defendant himself went far beyond the words he used in Parliament and in addition he associated himself with the writing distributed by the second defendant and he has wholly failed to show that he was under any duty to publish these matters to the body of persons, apparently a miscellaneous section of the public assembled that afternoon, or that these persons had any interest to receive the publication. As was said by Lord Atkinson in the case of *Adam* v. *Ward*[3]:—

"a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

The only question, then, which we have now to consider is whether the trial judge was right in holding that the defendants had made out their defence of justification. Had they proved that, subject to the provisions of section 8 of the Defamation Ordinance (No. 20 of 1957), their allegations against the plaintiff were substantially true?

Much of the evidence in the case is relevant in the sense that is was necessary to paint the background against which the main issues had to be viewed. In particular it was necessary, perhaps unfortunately, to canvass the behaviour of a number of individuals other than the protagonists. All that evidence has been discussed by my Lord and it is unnecessary to repeat it.

The truth, however, is that there were two allegations of substance made by the defendants against the plaintiff, everything else that was averred was ancillary to these. If these allegations were made out the defendants' published statements regarding the plaintiff were justified. If they were not made out then the defendants' case failed and the plaintiff was entitled to succeed. And it was for the defendants to prove what they averred.

The first of these allegations was that just prior to 10th August, 1962, the plaintiff demanded a share in the profits of the second defendant's fertiliser company as the price of using his political influence with the Government of Pahang to accelerate the granting of the guano concession which was necessary to the company's business, and that to have some control over the company's operation and to safeguard his share of the profits his wife should be made one of the two joint signatories operating the company's bank account.

The second allegation was that some two months later he increased his demands on the second defendant and when the second defendant resisted he turned against him and not only withdrew the support which he had hitherto given to him in his dealings with the Pahang Government but actively supported the second defendant's rivals, particularly his own father-in-law,

who ultimately obtained the advantage of the guano concession.

Regarding the first of these allegations the second defendant said that between June and August, 1962, when he was living in relations of considerable amity with the plaintiff, whose brother had just become engaged to his daughter, he was having trouble with the Pahang Government regarding the period of the guano concession to his company which was still only provisional and that the consequent delay was causing difficulties between himself and the Malayan Phosphate Company Limited with whom he had entered into an agreement for the exploitation of the concession. He consequently went to the plaintiff and asked him for his assistance to persuade the Pahang Government to expedite the matter. The plaintiff asked him what he would get in return if he gave his help. The second defendant said he would give him some free shares in the company. The plaintiff asked him how many and he replied: "up to 25%". It was then agreed that these shares would be in the name of the plaintiff's wife and the plaintiff said he would communicate with the Mentri Besar of Pahang.

A few days later, on 10th August, 1962, the second defendant again visited the plaintiff who spoke to the Mentri Besar on the telephone. It is admitted that that telephone call was made and also that the subject of it was the second defendant's guano concession and this is confirmed by a letter written by the Mentri Besar to the plaintiff on 21st August. But the second defendant went on to allege that at this meeting on 10th August the plaintiff said that as he would be getting shares in the company his wife should be allowed to keep in touch with the affairs of the company so that she would know whether it was running at a loss or profit. To that end he suggested that all drawings on the company's account should be by cheques signed by his wife as well as by the second defendant.

On this point the second defendant's evidence was not corroborated in the sense that there is no witness who claims to have overheard the conversation. Nevertheless, as my Lord has pointed out, four days later a letter was sent to the bank which kept the company's account forwarding a resolution of the directors to the effect that cheques drawn on the company's account should be signed both by the second defendant and the plaintiff's wife. Thereafter between that date and the end of October at least 25 cheques to a total amount of over $16,000 were drawn on the company's account and each one of these was signed by the plaintiff's wife.

Regarding this first allegation, that is the allegation that the plaintiff demanded a share in the company's profits as the price of his support, the second defendant's evidence was contradicted by the plaintiff and by his wife.

As regards the telephone conversation with the Mentri Besar, which was admitted, the plaintiff's explanation was that this was quite innocent, he was merely helping a friend and a political constituent as part of his duty as a public man, and of course there was nothing inherently unlikely about this although the fact that some six months later the Mentri Besar was sending to the plaintiff copies of letters addressed to the second defendant at a time when the Mentri Besar must have known that the latter was about to lose his cherished concession to the plaintiff's father-in-law suggests that the Mentri Besar, at any rate, took the view that the plaintiff's interest in the matter was deeper than he claimed (see the letters dated 3rd January, 1963 and 16th February, 1963).

So far, as has been said, there is nothing unlikely about the plaintiff's story. It cannot, however, be regarded in isolation from the arrangement as to the signing of the cheques. The plaintiff denied that he had any knowledge of this at the beginning and that when he did come to know of it he put an end to it. His wife said she fell in with the arrangement to oblige the second defendant who told her that a second signature, apparently of anybody, was necessary to operate the account. For the reasons stated by my Lord with which I agree and which it is unnecessary to repeat that this part of the evidence of the plaintiff and his wife was fantastic and unworthy of belief.

And it is to be observed that the real point regarding the cheques is not how much money passed into the hands of the plaintiff's wife; that is of no great importance. She certainly had an amount of about $1,191 which she said was for wedding expenses which one would have expected to have been defrayed out of the "wang hantaran" supplied by the plaintiff's family rather than out of the funds of the company. Then there were two other payments of $500 which the trial judge held, in my view rightly, to have been made to her though this was denied. The real point, however, is not how much the plaintiff's wife received but that for a period of two months the company could not spend a single cent without her knowledge and approval. That, to my mind, is a conclusive reason for accepting the second defendant's evidence as to the demands made by the plaintiff for shares in his company.

The second allegation made by the defendants was that about the middle of October the plaintiff called the second defendant to his house and demanded that his father-in-law, Musa, be made a director of the old company with an allowance of $200 a month, that his wife be

appointed secretary with an allowance of $200 a month; that his nephew be made a clerk with a salary of $160 a month; that one of the rooms at the back of the plaintiff's house be turned into the company's office and furnished at the company's expense and that the company's motor-car normally used by the second defendant be kept at his (the plaintiff's) house when not so used. The second defendant did not agree to any of these demands. Thereupon the plaintiff appeared to be angry and thereafter the relationship between them was wholly different.

That meeting was denied by the plaintiff, and the second defendant's averment has to be weighed against the plaintiff's denial. In doing so, however, regard must be had to subsequent events. The story of these has been told by my Lord and again it is not necessary to repeat what he has said. The plaintiff's wife wrote to the bank on 26th November informing them that she would no longer be signing cheques on the old company's account which would be operated in future solely by the second defendant, a statement, incidentally, which is somewhat curious in view of the lady's previous explanation that the second defendant's signature alone would not be acceptable to the bank. A new company of which Musa, the plaintiff's father-in-law, was a director was registered on 12th December, 1963. The plaintiff's wife went to the Mentri Besar and told him that the second defendant had demanded money from one of his associates to be given to the Mentri Besar and to the U.M.N.O. Pahang which was contemplating erecting a new building in Kuantan. The Pahang Government commenced to make enquiry and discovered that the second defendant had been guilty of a number of minor irregularities in the conduct of the guano concession. And the concession was ultimately withdrawn from his company and given to the company of which the plaintiff's father-in-law was a director.

That series of events by itself does not prove that the second defendant was speaking the truth. Coincidence is not proof. But it and the second defendant's evidence considered together were fully sufficient in my view to support the judge's finding that there was a meeting between the parties on 15th October at which the plaintiff increased his demands on the second defendant and his company and at which his demands were resisted.

In all the circumstances (and I have only refrained from discussing the numerous other matters in issue because I regard that such discussion on my part is superflous) I can find nothing that would justify this court in saying that the trial judge was wrong when he found that the allegations made by the second defendant regarding the events of 10th August and 15th October, 1962, were justified. And if these were justified then, particularly having regard to section 8 of the Defamation Ordinance, the defence of justification was made out.

I would dismiss the appeal.

Ong Hock Thye F.J. concurred.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.; S. Seenivasagam & Sons.*

LIM KO & ANOR. v. BOARD OF ARCHITECTS

[F.C. (Barakbah C.J. (Malaya), Pike C.J. (Borneo) and Ong Hock Thye F.J.) March 21 1966]

[K.L. — Federal Court Civil Appeal No. 60 of 1965]

Architects — Disciplinary proceedings — Conduct infamous in a professional respect — Natural justice — Architects Ordinance, 1951, ss. 9 and 16 — Architects Rules, 1955, rr. 45 and 48.

The appellants Lim Ko and Wong Chee Leong had been found guilty of unprofessional conduct in that (a) Lim Ko had signed for the purposes of submitting for approval, drawings made or under the supervision of Wong Chee Leong and (b) Wong Chee Leong had been a party to securing the signature of Lim Ko on the plans and has shared fees with him. An appeal to the High Court was dismissed ([1965] 2 M.L.J. 203) and the appellants appealed to the Federal Court. On appeal it was argued that (a) the board of architects was wrong in delegating its powers under section 9(1) of the Architects Ordinance; (b) there were irregularities in the composition of the committee of inquiry which heard the complaint in this case in that they were differently constituted for the hearings and the chairman did not preside over the meeting; (c) the appellants were not given sufficiently detailed notifications of the charges made against them; (d) that although the board had found the appellants guilty of unprofessional conduct this did not amount to a finding that the conduct was "infamous" in a professional respect under section 9(1)(b) of the Architects Ordinance; (e) that the appellants were not given an opportunity to present their cases; (f) that the contents of the Municipal file referred to by the committee of inquiry were not disclosed to the appellants or their counsel; (g) that the principles of natural justice had not been observed.

Held: (1) the appeal to the High Court and to the Federal Court was by way of rehearing and it was open to the appellants to show that the decision of the board was wrong;

(2) an inquiry under the Architects Ordinance is not to be equated to a criminal prosecution and all that the board was required to do was to do its best to act justly and reach just ends by just means;

(3) the proceedings before the board in this case were conducted with punctilious regard for justice and fairplay and there was no sign of any violation of the rules of natural justice;

(4) the Municipality file in this case was produced and the appellants and their counsel were well aware of the contents of the file;

(5) the board was entitled to set up the committee of inquiry in this case and this committee had not violated any of the rules of natural justice and the decision was correctly made by the board after considering the report of the committee;